

[New language is shown in **bold**; deleted text is lined out (~~line-out~~).

SUBCHAPTER 8. AGENCY FEE REGULATIONS

Article 1. Agency Fee

32990. Agency Fee.

~~(a) Pursuant to Government Code Section 3502.5, an exclusive representative may enter into an agreement with a public agency that provides for an "agency shop" form of organizational security or, alternatively, an exclusive representative may cause an "agency shop" arrangement to be placed in effect upon approval of a majority vote of those affected employees voting in a secret ballot election.~~

~~(b) Pursuant to Government Code Sections 3515.7, 3540.1 and 3543, an exclusive representative may enter into an agreement with an employer which provides for the "fair share" or "agency shop" form of organizational security.~~

~~(c) Pursuant to Government Code Section 3546, an exclusive representative of a bargaining unit including public school employees may initiate implementation of an organizational security provision for the payment of "fair share" or "agency shop" fees by covered employees.~~

~~(d) Pursuant to Government Code Section 3583.5, an exclusive representative of a bargaining unit including employees of the University of California, other than a unit including faculty who are eligible for membership in the Academic Senate, or employees of the California State University may initiate implementation of an organizational security provision for the payment of "fair share" or "agency shop" fees by covered employees.~~

~~(e) Pursuant to Public Utilities Code Section 99566.1, an exclusive representative of a bargaining unit including transit district employees may initiate implementation of an organizational security provision for the payment of "fair share" or "agency shop" fees by covered employees.~~

~~(f) Pursuant to Government Code Section 71632.5, an exclusive representative may enter into an agreement with a trial court that provides for an "agency shop" form of organizational security or, alternatively, an exclusive representative may cause an "agency shop" arrangement to be placed in effect upon approval of a majority vote of those affected employees voting in a secret ballot election.~~

~~(g) Pursuant to Government Code Section 71814, an exclusive representative may enter into an agreement with a regional committee that provides for an "agency shop" form of organizational security or, alternatively, an exclusive representative may cause an "agency shop" arrangement to be placed in effect upon approval of a majority vote of those affected employees voting in a secret ballot election.~~

~~(h) "Fair share" and "agency shop" forms of organizational security shall be known herein as "agency fee." All such agency fee arrangements, agreements and provisions (hereinafter~~

referred to as “provisions”) shall be ~~administered in accordance with~~ **subject to** the following regulations.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), (i) and (n), 3563(f), (h) and (m), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), (h), (m), Public Utilities Code. Reference: Sections 3502.5, 3515.7, 3540.1(i), 3543, 3546, 3583.5, 71632.5 and 71814, Government Code; Section 99566.1, Public Utilities Code; and Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292.

~~32991. Amount of Agency Fee.~~

~~The agency fee shall not exceed the amounts set forth in Government Code Sections 3502.5(a), 3513(k), 3540.1(i)(2), 3546, 3583.5, 71632.5 and 71814, or Public Utilities Code Section 99566.1.~~

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), (h), (m), Public Utilities Code. Reference: Sections 3502.5(a), 3513(k), 3540.1(i), 3543, 3546, 3583.5(a), 71632.5 and 71814, Government Code; Section 99566.1, Public Utilities Code; and Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292.

~~32992. Notification of Nonmember.~~

(a) The exclusive representative shall provide annual written notice to each ~~Each~~ nonmember who will be required to pay an agency fee. ~~shall annually receive written notice from the exclusive representative of~~ **The notice shall include:**

(1) The amount of the exclusive representative’s dues and the agency fee ~~which is to be expressed as a percentage of the annual dues per member based upon the chargeable expenditures identified in the notice;~~

(2) The percentage of the agency fee amount that is attributable to chargeable expenditures and the basis for this calculation; ~~The basis for the calculation of the agency fee; and~~

(3) A procedure for appealing all or any part of the agency fee. The amount of the agency fee to be paid by a nonmember who objects to the payment of an agency fee amount that includes nonchargeable expenditures (hereinafter referred to as an “agency fee objector”); and

(4) Procedures for (A) objecting to the payment of an agency fee amount that includes nonchargeable expenditures and (B) challenging the calculation of the nonchargeable expenditures.

(b) The calculation of the chargeable and nonchargeable expenditures will be based on an audited financial report, or an unaudited financial report if the exclusive representative’s

annual revenues are less than \$50,000 and a nonmember is afforded a procedure sufficiently reliable to ensure that a nonmember can independently verify that the employee organization spent its money as stated in the notice ~~All such calculations shall be made on the basis of an independent audit that shall be made available to the nonmember.~~

(c) Such written notice shall be sent/distributed to the nonmember either:

(1) At least 30 days prior to collection of the agency fee, ~~after which the exclusive representative shall place those fees subject to objection in escrow, pursuant to Section 32995 of these regulations; or~~

(2) Concurrent with the initial agency fee collection **provided escrow requirements in Section 32995 are met;** or

(3) **In the case of public school employees, where the agency fee year covers the traditional school year, on or before October 15 of the school year, provided escrow requirements in Section 32995 are met.**

~~provided however, that all agency fees so noticed shall be held in escrow in toto until all objectors are identified. Thereafter, only the agency fees for agency fee objectors shall be held in escrow, pursuant to Section 32995 of these regulations.~~

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), (h), (m), Public Utilities Code. Reference: Sections 3502.5, 3515.7, 3540.1(i), 3543, 3546, 3583.5, 71632.5 and 71814, Government Code; Section 99566.1, Public Utilities Code; **Harik v. California Teachers Association (9th Cir. 2003) 326 F.3d 1042, Grunwald v. San Bernardino Unified School District (9th Cir. 1990) 994 F.2d 1370, cert. denied, 510 U.S. 964 (1993), and Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292.**

32993. ~~Filing of Financial Report.~~ **Exclusive Representative's Objection Procedure.**

~~Each exclusive representative that has agreed to or has had implemented an agency fee provision shall, as part of the financial report required by Government Code Sections 3502.5(f), 3515.7(e), 3546.5, 3584(b), 3587, 71632.5(f) and 71814(f), or Public Utilities Code Section 99566.3, also include (a) the amount of membership dues and agency fees paid by employees in the affected bargaining unit, and (b) identify the expenditure(s) that constitute(s) the basis for the amount of the agency fee.~~

Each exclusive representative that has an agency fee provision shall administer an Objection Procedure in accordance with the following:

(a) An agency fee objection shall be filed in writing with the designated representative of the exclusive representative.

(b) The procedure shall allow at least 30 days following distribution of the notice required under Section 32992 of these regulations for the filing of an agency fee objection.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), (h), (m), Public Utilities Code. Reference: Sections 3502.5, 3515.7(e), **3540.1(i), 3543, 3546, 3546.5, 3584(b), 3587**, 71632.5 and 71814, Government Code; ~~Sections~~ **Section** 99566.1 and ~~99566.3~~, Public Utilities Code; and Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292.

32994. **Exclusive Representative's Challenge Agency Fee Appeal Procedure.**

(a) ~~If an~~ **An** agency fee payer **who** disagrees with the exclusive representative's determination of the **chargeable expenditures contained in the** agency fee amount, ~~that employee~~ (hereinafter known as an "agency fee **challenger objector**") may file an agency fee **challenge objection**. ~~Such agency fee objection shall be filed with the exclusive representative. An agency fee challenger objector may file an unfair practice charge that challenges the determination of the chargeable expenditures contained in the agency fee amount amount of the agency fee; however, no complaint shall issue until the agency fee challenger objector has first exhausted the exclusive representative's Exclusive Representative's Challenge Agency Fee Appeal Procedure. No agency fee challenger objector shall be required to exhaust the Exclusive Representative's Challenge Agency Fee Appeal Procedure where it is insufficient on its face.~~

(b) Each exclusive representative that has an agency fee provision shall administer ~~an Agency Fee Appeal~~ **a Challenge** Procedure in accordance with the following:

(1) ~~A~~ **An** agency fee ~~objection challenge shall be initiated in writing and shall be filed in writing~~ with an official of the exclusive representative who has authority to resolve agency fee ~~objections challenges~~.

(2) ~~The procedure shall allow at least An agency fee objection shall be filed not later than~~ 30 days following distribution of the notice required under Section 32992 of these regulations **for the filing of an agency fee challenge.**

(3) ~~Within 45 days of the last day for filing an objection under Section 32994(b)(2) of these regulations and upon~~ **Upon** receipt of the employee's **an** agency fee **challenge objection**, the exclusive representative shall **within 45 days of the last day for filing a challenge** request a prompt hearing regarding the agency fee before an impartial decisionmaker.

(4) The impartial decisionmaker shall be selected by the American Arbitration Association or the California State Mediation Service. The selection between these entities shall be made by the exclusive representative.

(5) Any party may make a request for a consolidated hearing of multiple agency fee **challenges objections** based on case similarities, including but not limited to, hearing location.

At any time prior to the start of the hearing, any party may make a motion to the impartial decisionmaker challenging any consolidation of the hearing.

(6) The exclusive representative bears the burden of establishing the reasonableness of the amount of the **chargeable expenditures** ~~agency fee~~.

(7) Agency fee **challenge** ~~objection~~ hearings shall be fair, informal proceedings conducted in conformance with basic precepts of due process.

(8) All decisions of the ~~agency fee~~ impartial decisionmaker shall be in writing, and shall be rendered no later than 30 days after the close of the hearing.

(9) All hearing costs shall be borne by the exclusive representative, unless the exclusive representative and the agency fee **challenger** ~~objector~~ agree otherwise.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), (h), (m), Public Utilities Code. Reference: Sections 3502.5, 3515.7, 3540.1(i), 3543, 3546, 3583.5, 71632.5 and 71814, Government Code; Section 99566.1, Public Utilities Code; and Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292.

32995. Escrow of Agency Fees in Dispute.

~~(a) The exclusive representative shall open an account in any independent financial institution in which to place in escrow either:~~

~~(1) Agency fees to be collected from nonmembers who have filed timely agency fee objections pursuant to Section 32994(b)(2) of these regulations; or~~

~~(2) Agency fees collected from nonmembers receiving concurrent notice with the initial agency fee collection provided in Section 32992(c)(2) of these regulations.~~

~~(b) Escrowed agency fees that are being challenged shall not be released until after either:~~

~~(1) Mutual agreement between the agency fee objector and the exclusive representative has been reached on the proper amount of the agency fee; or~~

~~(2) The impartial decisionmaker has made his/her decision, whichever comes first.~~

~~(c)~~

(a) If agency fee objectors are identified before fee collection begins for the agency fee year, there shall be an advance reduction in fees and/or advance rebate for those agency fee objectors.

(b) If agency fees are collected before agency fee objectors are identified, the exclusive representative shall place in escrow, in an independent financial institution, all agency fees collected until the exclusive representative provides appropriate rebates and/or fee reductions for agency fee objectors.

(c) If not otherwise escrowed, the exclusive representative shall place in escrow, in an independent financial institution, all agency fee amounts in dispute until all agency fee challengers are identified and, thereafter, continue to escrow the amounts in dispute for all agency fee challengers until the challenges are resolved by the impartial decision maker or mutual agreement between the agency fee challenger and the exclusive representative has been reached on the proper amount of the agency fee, whichever comes first.

(d) Interest at the prevailing rate shall be paid by the exclusive representative on all rebated fees.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), (h), (m), Public Utilities Code. Reference: Sections 3502.5, 3515.7, 3540.1(i), 3543, 3546, 3583.5, 71632.5 and 71814, Government Code; Section 99566.1, Public Utilities Code; and Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292 and Grunwald v. San Bernardino Unified School District (9th Cir. 1990) 994 F.2d 1370, *cert. denied*, 510 U.S. 964 (1993).

32996. Filing of Agency Fee Appeal Procedure.

The Board may require an exclusive representative with an agency fee ~~agreement or~~ provision to file a copy of its Agency Fee Appeal Procedure with the Board.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), (h), (m), Public Utilities Code. Reference: Sections 3502.5, 3515.7, 3540.1(i), 3543, 3546, 3583.5, 71632.5 and 71814, Government Code; Section 99566.1, Public Utilities Code; and Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292.

32997. Compliance.

It shall be an unfair practice for an exclusive representative to collect agency fees in violation of these regulations.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g) and (i), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), (h), (m). Reference: Sections 3502.5, 3515.7, 3519.5, 3540.1(i), 3542(d), 3543.6, 3543, 3546, 3546.5, 3563.2, 3564(d), 3571.1, 3583.5, 71632.5 and 71814, Government Code; Sections 99563.8, 99566.1 and 99566.3, Public Utilities Code; Harik v. California Teachers Association (9th Cir. 2003) 326 F.3d 1042, Grunwald v. San Bernardino Unified School District (9th Cir. 1990) 994 F.2d 1370, *cert.*

denied, **510 U.S. 964 (1993)**, and Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292.